IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.323/04, 324/04, 330/04, 331/04 & 332/2004

WRIT PETITION NO. 323/2004

1. Mr. Rahul L. Khope,
son of Mr. Laxmikant S. Khope, major,
bachelor, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa.

2. Mr. Laxmikant Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa. ..... Petitioners.

V/s.

1. The Goa State Co-operative Bank Ltd.,
having its registered office at
Sahakar Sakul Bldg., EDC Complex,
Patto Plaza, Panaji, Goa
through its Chief Executive;

2. Mr Prasad L. Khope,
son of Mr. Laxmikant S. Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa.
(R.2 deleted as per order dated 11.1.05)

3. The Registrar of Co-operative Societies,
Government of Goa,
near Mary Immaculate Girls High School,
Fontainhas, Panaji, Goa.

4. The Asst. Registrar of Co-operative Societies,
Government of Goa,
near Mary Immaculate Girls High School,
Fontainhas, Panaji, Goa. ..... Respondents.

Mr. Edwin de M. Furtado, Advocate for the petitioners.

Mr. S.R. Rivonkar, Advocate for respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. N. Takkekar, Addl. Government Advocate for respondents No.3 and 4.

WRIT PETITIONS NO.324/04 AND 330/04

1. Mr. Rahul L. Khope,
son of Mr. Laxmikant S. Khope, major,
bachelor, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa.

2. Mr. Laxmikant Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa. ..... Petitioners.

V/s.

1. The Goa State Co-operative Bank Ltd.,
having its registered office at
Sahakar Sakul Bldg., EDC Complex,
Patto Plaza, Panaji, Goa
through its Chief Executive;

2. Mr Prasad L. Khope,
son of Mr. Laxmikant S. Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
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4. The Asst. Registrar of Co-operative Societies,
Government of Goa,
near Mary Immaculate Girls High School,
Fontainhas, Panaji, Goa. ..... Respondents.

Mr. Edwin de M. Furtado, Advocate for the petitioners.

Mr. S.R. Rivonkar, Advocate for respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. D. Lawande, Addl. Government Advocate for respondents No.3 and 4.

WRIT PETITION NO. 331/2004

1. Mrs. Pooja P. Khope,
wife of Mr. Prasad Khope, major,
married, housewife, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa.

2. Mr. Laxmikant Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa. ..... Petitioners.

V/S.

1. The Goa State Co-operative Bank Ltd.,
having its registered office at
Sahakar Sakul Bldg., EDC Complex,
Patto Plaza, Panaji, Goa
through its Chief Executive;

2. Mr Prasad L. Khope,
son of Mr. Laxmikant S. Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa.
(R.2 deleted as per order dated 11.1.05)

3. The Registrar of Co-operative Societies,
Government of Goa,
near Mary Immaculate Girls High School,
Fontainhas, Panaji, Goa.

4. The Asst. Registrar of Co-operative Societies,
Government of Goa,
near Mary Immaculate Girls High School,
Fontainhas, Panaji, Goa. ..... Respondents.

Mr. Edwin de M. Furtado, Advocate for the petitioners.

Mr. S.R. Rivonkar, Advocate for respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. D. Lawande, Addl. Government Advocate for respondents No.3 and 4.

WRIT PETITION NO. 332/2004

1. Mrs. Pooja P. Khope,
wife of Mr. Prasad Khope, major,
married, housewife, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa.

2. Mr. Laxmikant Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa. ..... Petitioners.

V/s.

1. The Goa State Co-operative Bank Ltd.,
having its registered office at
Sahakar Sakul Bldg., EDC Complex,
Patto Plaza, Panaji, Goa
through its Chief Executive;

2. Mr Prasad L. Khope,
son of Mr. Laxmikant S. Khope, major,
married, businessman, resident of
House No.28, Milleamwaddo,
Cuncolim, Salcete, Goa.
(R.2 deleted as per order dated 11.1.05)

3. The Registrar of Co-operative Societies,
Government of Goa,
near Mary Immaculate Girls High School,
Fontainhas, Panaji, Goa.

4. The Asst. Registrar of Co-operative Societies,
Government of Goa,
near Mary Immaculate Girls High School,
Fontainhas, Panaji, Goa. ..... Respondents.

Mr. Edwin de M. Furtado, Advocate for the petitioners.

Mr. S.R. Rivonkar, Advocate for respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. N. Takkekar, Addl. Government Advocate for respondents No.3 and 4.

CORAM : A.P. LAVANDE, J.

Date of reserving the Judgment : 28.01.2005.

Date of pronouncing the Judgment : 03.02.2005.

J U D G M E N T :

Rule. The learned Counsel appearing for the respondents waive notice. By consent of the learned Counsel appearing for the parties, the petitions are taken up for final hearing.

2. All these petitions can be disposed of by common Judgment since they involve common question of law.

3. Heard Mr. Furtado, learned Counsel appearing for the petitioner, Mr. Rivonkar, learned Counsel appearing for respondent No.1 and Mr. Nadkarni, learned Advocate General with Mr. Takkekar and Mr. Lawande, Addl. Government Advocates for respondents No.3 and 4.

4. In Writ Petitions No.323/04, 324/04 and 332/2004, petitioner No.1 is the borrower and petitioner No.2 and respondent No.2 are the guarantors. In Writ Petitions No.330/04 and 331/04, respondent No.2 is the borrower and the petitioners are the guarantors. In 1999-2000, the principal borrowers obtained five different loans from the Goa State Co-operative Bank Ltd.-respondent No.1 herein (hereinafter, referred to as "the Bank") and since there was default in payment of the loan amounts, on 28.8.2000, the Bank filed five different applications under Section 74 of the Multi-State Co-operative Societies Act, 1984 (hereinafter referred to as "the Act"), raising disputes in respect of the defaults committed in payment of the loan amount against the borrowers and the guarantors. The petitioners herein filed their replies. Respondent No.4, before whom the dispute was referred, after perusing the documents produced by the appellants, by separate Judgments and Orders dated 7.9.2001 allowed the claims in each of the applications filed by the Bank. Aggrieved by the Judgments and Orders, the petitioners filed appeals before the Registrar of Co-operative Societies (respondent No.3) under Section 90 of the Act. Since the appeals were barred by limitation, they were accompanied by applications for condonation of delay. After hearing the parties, respondent No.3 by separate Judgments and Orders dated 16.3.2004, dismissed all the five appeals filed by the petitioners.

5. Aggrieved by the Judgments and Orders passed by respondent No.4 in five different appeals, the petitioners have preferred these petitions challenging the legality thereof. The details of the cases, filed by respondent No.1 and appeals preferred from the Judgments and Orders passed by respondent No.4 which are impugned in the present petitions, are as follows :

Writ Petition No.	Case No.	Appeal No.
323 of 2004	ARCS/HQ/CC/ABN/1246/2000 /490	20/2002/Multi/RCS
324 of 2004	ARCS/HQ/CC/ABN/1244/2000 /1185	18/2002/Multi/RCS
330 of 2004	ARCS/HQ/CC/ABN/1243/2000 /487	11/2002/Multi/RCS
331 of 2004	ARCS/HQ/CC/ABN/1242/2000 /484	19/2002/Multi/RCS
332 of 2004	ARCS/HQ/CC/ABN/1241/2000 /486	16/2002/Multi/RCS

6. After hearing both sides, respondent No.4 dismissed the appeals. Respondent No.4 held that the appeals filed by the petitioners were time-barred. Respondent No.4 also discussed the merits of the case and held that no case was made out for interference in each of the appeals.

7. Mr. Furtado, learned Counsel appearing for the petitioners submitted that the impugned Judgments and Orders passed by both the

Authorities are clearly in breach of the principles of natural justice. The learned Counsel further submitted that there is a clear breach of Rule 36 (3) of the Multi-State Co-operative Societies (Registration, Membership, etc.) Rules, 1985 (hereinafter, referred to as "the Rules"), resulting in serious prejudice to the petitioners. The learned Counsel further submitted that respondent No.4 ought to have allowed the parties to lead evidence in terms of Rule 36(3) of the Rules, and only thereafter respondent No.4 could have passed the Judgment in the matter. The learned Counsel further submitted that the procedure adopted by respondent No.4 is not in accordance with the Rules and in particular Rule 36(3) of the Rules. It is further submitted that respondent No.3 who is the appellate Authority ought to have condoned the delay and allowed the appeals filed by the petitioners herein.

8. Per contra, Shri Rivonkar, learned Counsel for the Bank submitted that there was no need for respondent No.4 to record evidence. According to the learned Counsel, it was for the petitioners to file applications seeking leave to lead evidence, in case the petitioners were interested in challenging the claim made by the Bank. The learned Counsel submitted that no interference is called for in exercise of writ jurisdiction against the impugned Judgments and Orders.

9. Learned Advocate General appearing for respondents No.3 and

4 has submitted that the correct course would be to set aside both the Judgments and Orders and remand the matters to respondent No.4 to permit the parties to lead evidence although his name has been deleted from the cause title.

10. I have considered the rival submissions made by the learned Counsel appearing for the parties. At this stage, it would be appropriate to quote Rule 36(3) of the Rules, which reads as under :

> **"36. Procedure in proceedings before Central Registrar.** - (1) ...
>
> (2) ...
>
> (3)The Central Registrar or other person deciding the dispute shall record a brief note of the evidence of the parties and witnesses who appear before him and upon the evidence so recorded and after consideration of any documentary evidence produced by the parties, a decision shall be given in accordance with justice, equity and good conscience by the Central Registrar or other person deciding the dispute. The decision given shall be in writing.
>
> In the absence of any party duly summoned to attend, the dispute may be decided ex-parte. Ex-parte decision may, on sufficient cause for non-attendance being shown, be set aside by the Central Registrar or other person deciding the dispute, and the dispute ordered to be re-taken on the register of disputes and disposed of:
>
> Provided that no application for setting aside an ex-parte decision shall lie unless made within thirty days from the date of such decision and the party for whose non-attendance such decision was made had been duly served with the notice, or in other cases within thirty days from the date of

knowledge of such derision having been made."

11. Bare perusal of Rule 36 discloses that the person deciding the dispute has to record brief note of the evidence of the parties and witnesses who appear before him and upon the evidence so recorded and after consideration of the documentary evidence produced by the parties, the decision has to be given in accordance with justice, equity and good conscience. Having regard to Rule 36(3) of the Rules, I am unable to accept the submission made by the learned Counsel appearing for the Bank that it was not necessary for respondent No.4 to record evidence unless the petitioners disputed their liability and insisted to lead evidence in support of their case. No doubt, Rule 36(3) does not envisage a full-fledged trial as before the Civil Court, but nonetheless, the Authority deciding the dispute is bound to record brief notes of the evidence of the parties and the witnesses who appear before him and only after considering the evidence, the authority has to give a decision in the matter. Admittedly, in the present case, respondent No.4 has not recorded any evidence and has only taken on record the documents produced by the Bank. In view of Rule 36(3), in my view, the procedure adopted by respondent No.4 is contrary to law. Respondent No.4 ought to have allowed both the parties to lead evidence and only thereafter, ought to have given the decision in all the five matters before him. I am, therefore, of the view that the Judgments and Orders passed by

respondents No.3 and 4 in all the five matters cannot be sustained. In view of the fact that the Judgments and Orders are liable to be set aside as against the petitioners, it would be just and proper to set aside the Judgments and Orders passed by respondents No.3 and 4 as against respondent No.2 also although his name has been deleted from the cause title.

12. In the result, therefore, all the five petitions are allowed. The Judgments and Orders dated 7.9.2001 and 16.3.2004 passed by respondent No.4 and respondent No.3 respectively which are impugned in these petitions, are quashed and set aside and all the matters are remanded to respondent No.4 to proceed in accordance with the findings given and observations made hereinabove and to decide in accordance with law.

The parties are directed to appear before respondent No.4 on 15.2.2005 at 11.00 a.m. Having regard to the fact that the disputes were raised in the year 2000, it would be just and proper to direct respondent No.4 to decide the disputes within three months from 15.2.2005. Rule is made absolute in the aforesaid terms, in each petition. The parties to bear their owns costs.

A.P. LAVANDE, J.

ssm.